

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 99-246
FM Broadcast Stations.)	RM-9593
(Winslow, Camp Verde, Mayer and)	RM-9770
Sun City West, Arizona))	
)	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 31, 2002

Released: August 2, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it an Application for Review filed by Desert West Air Ranchers Corporation ("Desert West") directed to the staff *Memorandum Opinion and Order* in this proceeding.¹ No other pleadings were filed. For the reasons discussed below, we are reallocating Channel 236C to Sun City West, Arizona, and are modifying the license of Station KFMR to specify Sun City West as the community of license. In view of this action, we are dismissing the Application for Review.

Background

2. At the request of Desert West, licensee of Station KFMR, Channel 236C, Winslow, Arizona, the *Notice of Proposed Rule Making* in this proceeding proposed the reallocation of Channel 236C from Winslow to Camp Verde, Arizona, and modification of the Station KFMR authorization to specify Camp Verde as the community of license. This request was filed pursuant to Section 1.420(i) of the Rules which permits the modification of a station authorization without affording other interested parties an opportunity to file competing expressions of interest.² Under *Community of License*, we determine whether the proposed change in community of license will result in a preferential arrangement of allotments. In making this determination, we compare the existing versus the arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ The proposed reallocation would provide a first local service to Camp Verde.

¹ *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (M.M. Bur. 2001).

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

3. In response to the *Notice*, Desert West filed “Comments and Alternate Proposals” on August 23, 1999. In its Comments, Desert West states that it had completed construction of its authorized facilities at Winslow, and that coverage of Camp Verde is unsatisfactory due to mountainous terrain around Camp Verde causing multipath interference. Since these facilities would also be used in connection with the proposed reallocation to Camp Verde, Desert West modified its original proposal to request reallocation to Sun City West, Arizona, or “in the alternative,” to Mayer, Arizona.

4. In the *Report and Order*, we reallocated Channel 236C from Winslow to Mayer, and modified the Station KFMR license to specify Mayer as its community of license.⁴ In doing so, we determined that the Sun City West reallocation proposal could not be considered due to the Channel 236C allotment at Yuma, Arizona. In the *Memorandum Opinion and Order*, we denied a Petition for Partial Reconsideration filed by Desert West.

5. In its Application for Review, Desert West seeks Commission review of our action insofar as it denied the request to reallocate Channel 236C to Sun City West. In support of its Application for Review, Desert West notes that subsequent to the *Report and Order*, we granted an application (File No. BPH-20000330ABJ) downgrading Station KTTI, Yuma, Arizona, to specify operation on Channel 236C2 and amended the FM Table of Allotments accordingly.

Discussion

6. Under Section 1.113(a) of the Commission’s Rules, we may modify or set aside on our own motion any action taken pursuant to delegated authority within 30 days of the public notice of such action.⁵ The filing of an application for review tolls the 30-day period.⁶ In view of the fact that the Class C allotment at Yuma is no longer an impediment to consideration of the proposed reallocation of Channel 236C from Winslow to Sun City West, Arizona, we are hereby setting aside the *Report and Order* in this proceeding and will consider the proposed reallocation to Sun City West.

7. We are reallocating Channel 236C to Sun City West, Arizona, and are modifying the Station KFMR license to specify Sun City West as the community of license.⁷ This will provide Sun City West with a first local service while Winslow will continue to receive local service from AM Station KINO. This will also result in a net gain in service to 1,406,730 persons. The area that will lose service will continue to receive in excess of five services.⁸

8. We recognize that Sun City West is located within the Phoenix Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.⁹ In essence, we consider the extent the station will

⁴ *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 15 FCC Rcd 9155 (M. M. Bur. 2000).

⁵ 47 C.F.R. § 1.113(a).

⁶ See *Com/Nav Marine, Inc.*, 2 FCC Rcd 2144 (Priv. Rad. Bur. 1987); see also *Florida Enterprises, Inc.*, 598 F. 2d 37, 48 n. 51 (D.C. Cir. 1978) (fact that appeal from original order was before the court did not preclude *sua sponte* reconsideration of that action by the Bureau).

⁷ The reference coordinates for the Channel 236C allotment at Sun City West, Arizona, are 34-14-33 and 112-21-53.

⁸ The Commission considers five or more fulltime aural services to be abundant. See *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

⁹ See e.g. *Huntington Broadcasting Co. v FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most important, the independence of the suburban community.¹⁰

9. In this situation, Sun City West, with a 2000 U. S. Census population of 26,344 persons, is entitled to a preference as a first local service. While this population is approximately 2% of the population of Phoenix, we consider 26,344 persons to be a substantial population and such a percentage has not precluded favorable consideration as a first local service.¹¹ We also note that the proposed 70 dBu contour will encompass only 10% of the Phoenix Urbanized Area.¹² Consistent with a majority of the factors set forth in *Faye and Richard Tuck*, we conclude that Sun City West is not dependent upon the Phoenix Urbanized Area for its existence. In regard to these factors, we first note that Sun City West is a master-planned adult community for people 55 years of age and older located approximately 21 miles northwest of Phoenix. Sun City West receives no governmental services from the city of Phoenix. According to the Arizona Department of Economic Security, the workforce consists of only 1,662 persons because most of the residents are retired. There are numerous businesses located in Sun City West providing employment opportunities along with the Del E. Webb Memorial Hospital providing medical care. There are also recreational facilities, civic organizations and a public library available to the residents within Sun City West. In addition, Sun City West has its own local newspapers providing an outlet for local news as well as a separate advertising market. Sun City West has its own zip code and the Sun City West Business and Professional Association produces and distributes an annual directory of businesses in Sun City West. Although Sun City West has its own local fire department and local library, most governmental services are provided by Maricopa County.

10. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, that effective September 17, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Mayer, Arizona	-----
Sun City West, Arizona	236C
Winslow, Arizona	-----

¹⁰ In *Faye and Richard Tuck*, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M. Bur. 1996); *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570 (M.M. Bur. 1997).

¹¹ See e.g. *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (M.M. Bur. 1996); *Bay St. Louis and Poplarville, Mississippi*, 10 FCC Rcd 13144 (M.M. Bur. 1995); and *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (M.M. Bur. 1992).

¹² Cf. *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Desert West Air ranchers Corporation for Station KFMR, Channel 236C, Winslow, Arizona, IS MODIFIED to specify Sun City West, Arizona, as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

12. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, Desert West Ranchers Corporation is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in community of license.

13. IT IS FURTHER ORDERED, that the aforementioned Application for Review filed by Desert West Air Ranchers Corporation IS DISMISSED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau